IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL SECOND APPEAL No. 81 of 1982

UGAM RAJ
V/S
PREM SINGH

Mr. MANISH SHISHODIA, for the appellant / petitioner

Mr. RR NAGORI & Mr. SN PUNGALIA, for the respondent

Date of Order : 1.8.2006

HON'BLE SHRI N P GUPTA,J.

ORDER

Heard learned counsel for the parties.

It is informed that respondent no.5 has died. From a look at the order-sheets, it is clear that as against respondent no. 6 Amolak Chand, the appeal had already been ordered to be abated on 27.7.2006 as it was reported way back in 2004 that he had died two years back, and since then no steps for substitution of his legal representatives.

From the perusal of the impugned judgments and decrees of the two learned courts below, it is clear that the suit has been dismissed by both the learned courts below by recording findings against the plaintiff which findings, as against the deceased respondent no. 6 who was defendant no. 4 in the suit have become final, and if any interference is made in the impugned decree by acceptance

of appeal, by deciding the substantial questions of law as framed, in favour of the appellant, then it would give rise to two conflicting decree; one being the impugned decree that has become final in favour of the legal representatives of respondent no. 6 Amolak Chand, and the other that may be passed against the other defendants. This is irrespective of the fact that the other defendant Chiranji Lal is also reported to have expired long ago.

For the present purposes, even without considering the question of death of Chiranji Lal, even on account of the abatement of the appeal against Amolak Chand, respondent no.6, in my view, the impugned decree being not severable, the appeal abates as a whole.

Accordingly, the appeal is dismissed as having abated as a whole.

(N P GUPTA),J.

/Sushil/